

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

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Paper No. 23

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte DAWNE P. SCHOMER

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Appeal No. 1997-3288  
Application 08/529,303<sup>1</sup>

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ON BRIEF

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Before URYNOWICZ, HAIRSTON, and BARRETT, Administrative Patent Judges.

BARRETT, Administrative Patent Judge.

DECISION ON APPEAL

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<sup>1</sup> Application for patent filed September 18, 1995, which is a continuation of Application 08/238,569, filed May 5, 1994, now abandoned.

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This is a decision on appeal under 35 U.S.C. § 134 from the final rejection of claims 2 and 3.

We reverse.

#### BACKGROUND

The disclosed invention is directed to a method for tracking a chemical. The method senses the amount of chemical used by the process and the amount of chemical disposed of (wasted or otherwise lost) and reduces the amount in inventory by the sensed amounts.

Claim 2 is reproduced below.

2. A method for controlling a chemical for use in a process, the method comprising the steps of:

defining a plurality of control points, at least one of said control points used to control the process;

assigning a process identification number (PIN) to the process;

identifying a plurality of operators, at least one of said operators assigned to said at least one of said control points;

allowing only said at least one of said operators to inventory the chemical to said at least one of said control points for the use in the process;

allowing only said at least one of said operators to issue the chemical from said inventory for the use in the process;

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sensing the use of the chemical in the process at a plurality of use points;

sensing disposal of the chemical in the process at a plurality of disposal points; and

removing the chemical from said inventory in response to said sensing steps.

The Examiner relies on the following prior art:

Sellers et al. (Sellers) 5,311,438 May 10,  
1994  
(filed January 31, 1992)

Shearman, CHEMPUTERS STAY ON TOP OF ENVIRONMENTAL REGULATIONS: Software helps users comply with a myriad of laws, Chemical Engineering, Vol. 99, No. 5, May 1992, page 175.

Claims 2 and 3 stand rejected under 35 U.S.C. § 103 as being unpatentable over the combination of Sellers and Shearman.

We refer to the Final Rejection (Paper No. 15) and the Examiner's Answer (Paper No. 20) (pages referred to as "EA\_\_") for a statement of the Examiner's position and to the Appeal Brief (Paper No. 19) (pages referred to as "Br\_\_") and the Reply Brief (Paper No. 21) (pages referred to as "RBr\_\_") for a statement of Appellant's arguments thereagainst.

OPINION

Appellant argues (Br6-7):

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Sellers, et al. in view of Shearman does not teach or suggest Applicant's claimed steps of defining control points, issuing a chemical from a control point, sensing the use of the chemical at the use points, sensing disposal of the chemical at disposal points and adjusting the inventory in accordance with the sensing steps.

The Examiner recognizes this as the main argument (EA8-9) and points to parts of Sellers and Shearman which are relied on to show the limitations (EA9). Since this was the first time the correspondence between the claim limitations and the references was provided, Appellant submitted a Reply Brief which argues that the references do not teach or suggest any of the limitations.

We have thoroughly reviewed the references, paying particular attention to those portions of the references relied upon by the Examiner and to Appellant's arguments in the Brief and the Reply Brief. We find that Sellers discloses what can be broadly considered a "control point" and the step of "allowing ... one of said operators to issue the chemical from said inventory for the use in the process" at column 11, line 52 to column 12, line 14 of the specification, especially the part at column 12, lines 11-14, which discusses that the system will not allow an owner to remove any more from the tank than is owned. The "at least one of said control points"

is the point of withdrawal of the material from the tank. Other "control points" can be arbitrarily defined in the system because no use is claimed for the other control points; even the "at least one of said control points" is only impliedly recited to be the point where the chemical is issued from inventory. The "operator" is the owner who authorizes issuance of material from the tank. The portions of Sellers relied on by the Examiner (abstract and col. 10, lines 41-51) are not helpful.

With respect to the limitation of "sensing the use of the chemical in the process at a plurality of use points," the Examiner refers to the description of monitoring and compiling data on emissions of hazardous materials as described at column 9, lines 61-68, of Sellers. This has nothing to do with sensing or measuring the use of the chemical in the process. Emissions is a measure of disposal of the chemical. Similarly, collection of emission data by "Sniffer" at page 6 of Shearman or "monitoring hazardous and toxic wastes in the ground, air and water" by "ERMA" at page 7 of Shearman has nothing to do with sensing the use of the chemical in the

process. Nevertheless, we find that Sellers suggests measuring the use at one use point.

The system in Sellers will not allow an owner to take more from the tank than he or she owns. This reasonably would have implied to one of ordinary skill in the art the steps of: (1) sensing at the tank exit (what we consider to be the "at least one of said control points") to measure what is being used; (2) subtracting the sensed amount of material from the inventory for the tank; and (3) comparing the sensed amount of material removed with the amount owned to ensure that no more is removed than is owned. Thus, the system in Sellers must perform the step "sensing the use of the chemical in the process" at one point (the tank exit) and the step of "removing the chemical from said inventory in response to said sensing step[]." The first problem is that claim 2 calls for sensing at "a plurality of use points," whereas Sellers has only the one identifiable use point.

With respect to the limitation of "sensing disposal of the chemical in the process at a plurality of disposal points," the Examiner cites to the same portions of Sellers and Shearman as noted in the preceding paragraph and further

to column 10, lines 52-68, and column 11, lines 1-15 of Sellers. Monitoring and compiling data on emissions of hazardous materials as described at column 9, lines 61-68, of Sellers teaches "sensing disposal of the chemical" and it is plain that measurement must take place at "a plurality of disposal points." In our opinion, monitoring and compiling data on emissions in Sellers and the collection of emission data in Shearman would reasonably have suggested to one of ordinary skill in the art of tracking hazardous chemicals that the amount of the emissions should be measured. That is, it does no good to measure that there is a hazardous emission without measuring how much is being produced.

As previously discussed, we find that Sellers reasonably implies a step of subtracting the sensed amount of material removed from the tank from the tank inventory. However, this is in response to only the single "use point" at the tank exit. Sellers does not disclose or suggest "a plurality of use points" for a single chemical; this is a first difference. Furthermore, while Sellers may reasonably have suggested measuring the disposal of the chemical at a plurality of disposal points, it does not suggest that the amount sensed

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should be subtracted from the amount in inventory in a method of tracking chemical usage. In fact, since the amount of material removed from the tank will be either used or disposed of, the amount sensed at the disposal points would not be subtracted; this is a second difference. The Examiner does not address these differences and, thus, has failed to establish a prima facie case of obviousness. The rejection of claims 2 and 3 is reversed.

REVERSED

STANLEY M. URYNOWICZ, JR.	)	
Administrative Patent Judge	)	
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	)	
	)	BOARD OF PATENT
KENNETH W. HAIRSTON	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
	)	
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	)	
LEE E. BARRETT	)	
Administrative Patent Judge	)	

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